



4331-84

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[LLWO210000.L1610000]

National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of revisions.

SUMMARY: This notice announces the establishment of a categorical exclusion (CX) for the Bureau of Land Management (BLM) as directed by the amendment of the Healthy Forests Restoration Act (HFRA) of 2003 by the Agriculture Improvement Act of 2018. This establishment revises BLM policies and procedures for compliance with the National Environmental Policy Act (NEPA), as amended; other statutes; Executive Order 11514, as amended; Executive Order 12114; and the Council on Environmental Quality's regulations. These CXs, as well as others established by Congress, as described below, will be incorporated into the Departmental Manual (DM) and will be added to the Department of the Interior's (Department) Electronic Library of Interior Policies (ELIPS).

DATES: The CXs will be incorporated into 516 DM 11 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The public will be able to review the revised DM on the Department's website at <http://www.doi.gov/nepa>. ELIPS is located at: <https://www.doi.gov/elips>. The

BLM's current procedures can be found at:

<https://elips.doi.gov/ELIPS/DocView.aspx?id=1721>.

FOR FURTHER INFORMATION CONTACT: Heather Bernier, Acting Division Chief, Planning and Decision Support, Bureau of Land Management at (202) 912-7282, [insert address], or hbernier@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Heather Bernier. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM's NEPA procedures, located at Chapter 11 of Part 516 of the Departmental Manual (516 DM 11), were last updated August 14, 2007. The Agriculture Improvement Act of 2018 amended Title VI of the HFRA of 2003 (16 U.S.C. 6591 et seq.) to add Section 606. Section 606 directed development of a CX for specified covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer (HFRA, Section 606(b)(1)). Section 606 further provides the specific terms, actions, limitations, exclusions, and definitions of activities to be included in the CX established. As directed by this section, the BLM is to establish the CX that meets these same specific terms, actions, limitations, exclusions, and definitions; and to establish the CX within one year of the enactment of the legislation (by December 20, 2019). In addition, the BLM is taking the opportunity to incorporate into 516 DM 11 several other CXs established by Congress in recent years.

Because the CXs are established or directed by Congress, the BLM does not have the discretion to change their terms.

Below is the new text of Chapter 11, reflecting the statutorily established or directed CXs:

11.10 Categorical Exclusions Established or Directed by Statute

A. The Energy Policy Act of 2005 (Public Law 109-58) (42 USC 15942) established actions for categorical exclusion from NEPA analysis. Use of Energy Policy Act categorical exclusions does not require review for extraordinary circumstances. This is because these CXs are established by statute, and their application is governed by that statute. Section 390 of the Energy Policy Act of 2005 provides:

(a) NEPA Review.—Action by the Secretary of the Interior in managing the public lands, with respect to any of the activities described in subsection (b), shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969 would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas.

(b) Activities Described.—The activities referred to in subsection (a) are the following:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction or major renovation of a building or facility.

B. Section 3023 “Grazing Permits and Leases” of Public Law 113-291, The Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015, amended Section 402 of FLPMA. The amended text is now included in FLPMA, as amended, as Section 402(h). Therefore, the BLM may use the grazing permit categorical exclusion (1) or the trailing and crossing categorical exclusion (2). Application of either categorical exclusion requires extraordinary circumstances review. Section 402(h) of FLPMA provides:

(1) IN GENERAL.—The issuance of a grazing permit or lease by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

(A) the issued permit or lease continues the current grazing management of the allotment; and

(B) the Secretary concerned—

(i) has assessed and evaluated the grazing allotment associated with the lease or permit; and

(ii) based on the assessment and evaluation under clause (i), has determined that the allotment—

(I) with respect to public land administered by the Secretary of the Interior—

(aa) is meeting land health standards; or

(bb) is not meeting land health standards due to factors other than existing livestock grazing; or

(2) TRAILING AND CROSSING.—The trailing and crossing of livestock across public land and the implementation of trailing and crossing practices by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

C. The Agriculture Improvement Act of 2018 (P.L. 115-334) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to add Section 606. Section 606 directed development of a categorical exclusion for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer (HFRA, Section 606(b)(1)). This categorical exclusion may be used to carry out a “covered vegetation management activity” (defined at HFRA, Section 606(a)(1)(B)) whose purpose is for the management of greater sage-grouse and mule deer habitat on public lands that was designated under HFRA section 602(b), on December 20, 2018 (HFRA, Section 606(g)(2)). Application of this categorical exclusion requires extraordinary circumstances review. Section 606 of HFRA provides:

(a) Definitions.—In this section:

(1) COVERED VEGETATION MANAGEMENT ACTIVITY.—

(A) IN GENERAL.—The term ‘covered vegetation management activity’ means any activity described in subparagraph (B) that—

(i) is carried out on public land administered by the Bureau of Land Management;

(ii) with respect to public land, meets the objectives of the order of the Secretary of the Interior numbered 3336 and dated January 5, 2015;

(iii) conforms to an applicable land use plan;

(iv) protects, restores, or improves greater sage-grouse or mule deer habitat in a sagebrush steppe ecosystem as described in—

(I) Circular 1416 of the United States Geological Survey entitled ‘Restoration Handbook for Sagebrush Steppe Ecosystems with Emphasis on Greater Sage-Grouse Habitat—Part 1. Concepts for Understanding and Applying Restoration’ (2015); or

(II) the habitat guidelines for mule deer published by the Mule Deer Working Group of the Western Association of Fish and Wildlife Agencies;

(v) will not permanently impair—

(I) the natural state of the treated area;

(II) outstanding opportunities for solitude;

(III) outstanding opportunities for primitive, unconfined recreation;

(IV) economic opportunities consistent with multiple-use management; or

(V) the identified values of a unit of the National Landscape Conservation System;

(vi) (I) restores native vegetation following a natural disturbance;

(II) prevents the expansion into greater sage-grouse or mule deer habitat of—

(aa) juniper, pinyon pine, or other associated conifers; or

(bb) nonnative or invasive vegetation;

(III) reduces the risk of loss of greater sage-grouse or mule deer habitat from wildfire or any other natural disturbance; or

(IV) provides emergency stabilization of soil resources after a natural disturbance;

and

(vii) provides for the conduct of restoration treatments that—

(I) maximize the retention of old-growth and large trees, as appropriate for the forest type;

(II) consider the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity;

(III) are developed and implemented through a collaborative process that—

(aa) includes multiple interested persons representing diverse interests; and

(bb) (AA) is transparent and nonexclusive; or

(BB) meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125); and

(IV) may include the implementation of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

(B) DESCRIPTION OF ACTIVITIES.—An activity referred to in subparagraph (A) is—

(i) manual cutting and removal of juniper trees, pinyon pine trees, other associated conifers, or other nonnative or invasive vegetation;

(ii) mechanical mastication, cutting, or mowing, mechanical piling and burning, chaining, broadcast burning, or yarding;

(iii) removal of cheat grass, medusa head rye, or other nonnative, invasive vegetation;

(iv) collection and seeding or planting of native vegetation using a manual, mechanical, or aerial method;

(v) seeding of nonnative, noninvasive, ruderal vegetation only for the purpose of emergency stabilization;

(vi) targeted use of an herbicide, subject to the condition that the use shall be in accordance with applicable legal requirements, Federal agency procedures, and land use plans;

(vii) targeted livestock grazing to mitigate hazardous fuels and control noxious and invasive weeds;

(viii) temporary removal of wild horses or burros in the area in which the activity is being carried out to ensure treatment objectives are met;

(ix) in coordination with the affected permit holder, modification or adjustment of permissible usage under an annual plan of use of a grazing permit issued by the Secretary concerned to achieve restoration treatment objectives;

(x) installation of new, or modification of existing, fencing or water sources intended to control use or improve wildlife habitat; or

(xi) necessary maintenance of, repairs to, rehabilitation of, or reconstruction of an existing permanent road or construction of temporary roads to accomplish the activities described in this subparagraph.

(C) EXCLUSIONS.—The term ‘covered vegetation management activity’ does not include—

- (i) any activity conducted in a wilderness area or wilderness study area;
- (ii) any activity for the construction of a permanent road or permanent trail;
- (iii) any activity conducted on Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;
- (iv) any activity conducted in an area in which activities under subparagraph (B) would be inconsistent with the applicable resource management plan; or

(2) SECRETARY CONCERNED.—The term ‘Secretary concerned’ means—

(B) the Secretary of the Interior, with respect to public land.

(3) TEMPORARY ROAD.—The term ‘temporary road’ means a road that is—

(A) authorized—

- (i) by a contract, permit, lease, other written authorization; or
- (ii) pursuant to an emergency operation;

(B) not intended to be part of the permanent transportation system of a Federal department or agency;

(C) not necessary for long-term resource management;

(D) designed in accordance with standards appropriate for the intended use of the road, taking into consideration—

- (i) safety;
- (ii) the cost of transportation; and
- (iii) impacts to land and resources; and

(E) managed to minimize—

- (i) erosion; and
- (ii) the introduction or spread of invasive species.

(b) Categorical Exclusion.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary concerned shall develop a categorical exclusion (as defined in section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation)) for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer.

(2) ADMINISTRATION.—In developing and administering the categorical exclusion under paragraph (1), the Secretary concerned shall—

(A) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) with respect to public land, apply the extraordinary circumstances procedures under section 46.215 of title 43, Code of Federal Regulations (or successor regulations), in determining whether to use the categorical exclusion; and

(D) consider—

- (i) the relative efficacy of landscape-scale habitat projects;

(ii) the likelihood of continued declines in the populations of greater sage-grouse and mule deer in the absence of landscape-scale vegetation management; and

(iii) the need for habitat restoration activities after wildfire or other natural disturbances.

(c) Implementation Of Covered Vegetative Management Activities Within The Range Of Greater Sage-Grouse And Mule Deer.—If the categorical exclusion developed under subsection (b) is used to implement a covered vegetative management activity in an area within the range of both greater sage-grouse and mule deer, the covered vegetative management activity shall protect, restore, or improve habitat concurrently for both greater sage-grouse and mule deer.

(d) Long-Term Monitoring And Maintenance.—Before commencing any covered vegetation management activity that is covered by the categorical exclusion under subsection (b), the Secretary concerned shall develop a long-term monitoring and maintenance plan, covering at least the 20-year period beginning on the date of commencement, to ensure that management of the treated area does not degrade the habitat gains secured by the covered vegetation management activity.

(e) Disposal Of Vegetative Material.—Subject to applicable local restrictions, any vegetative material resulting from a covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may be—

(1) used for—

(A) fuel wood; or

(B) other products; or

(2) piled or burned, or both.

(f) Treatment For Temporary Roads.—

(1) IN GENERAL.—Notwithstanding subsection (a)(1)(B)(xi), any temporary road constructed in carrying out a covered vegetation management activity that is covered by the categorical exclusion under subsection (b)—

(A) shall be used by the Secretary concerned for the covered vegetation management activity for not more than 2 years; and

(B) shall be decommissioned by the Secretary concerned not later than 3 years after the earlier of the date on which—

(i) the temporary road is no longer needed; and

(ii) the project is completed.

(2) REQUIREMENT.—A treatment under paragraph (1) shall include reestablishing native vegetative cover—

(A) as soon as practicable; but

(B) not later than 10 years after the date of completion of the applicable covered vegetation management activity.

(g) Limitations.—

(1) PROJECT SIZE.—A covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may not exceed 4,500 acres.

Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ regulations (40 CFR 1507.3).

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